

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,467
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Appeal of)	
)	

INTRODUCTION

The petitioners (Mr. and Mrs. M) appeal the decision by the Department of Social and Rehabilitation Services (SRS) revoking their license to operate a foster home. The issue is whether the petitioners violated any provisions of the foster home licensing regulations.

FINDINGS OF FACT

1. The petitioners became foster parents in 1995 when SRS placed two sisters in their home with the understanding that the petitioners were seeking to adopt them. The petitioners knew the children because Mrs. M had worked with them at their school. Both children have significant physical and emotional handicaps.

2. The children proved difficult to care for, and SRS arranged for the petitioners to receive support services to help with their care. In addition there were problems in the petitioners' home unrelated to the foster children.

3. In early 1997, the petitioners requested that SRS remove one of the children from their home. SRS did so, but returned the child to the petitioners a short time later when the petitioners requested that she be returned. SRS also assigned a new caseworker for the children during this

time because of "communication problems" between the petitioners and the children's previous worker.

4. However, from SRS's viewpoint there continued to be problems in the petitioners' home; and in the Spring of 1997, SRS decided to find another placement for the children. Although the timing is unclear from the evidence presented, at some time during this period one of the children was again removed from the petitioners' home.

5. The petitioners vehemently opposed the decision by SRS to remove the children from their home. The petitioners requested and received an administrative review by SRS of that decision in the Spring of 1997, to no avail. The petitioners also unsuccessfully attempted to intervene in a pending case in Family Court that summer concerning the children's placement. At the court proceedings the children were represented by an attorney and a guardian ad litem, both of whom apparently supported removal from the petitioners' home and an alternative long-term placement for the children. The petitioners also were represented by an attorney at this time.

6. Increasingly frustrated in their attempts to prevent the children from being taken from their home, in September, 1997, the petitioners placed a petition in public view in two general stores and a coffee shop in their hometown. The petition identifies the petitioners, the first names of the foster children, and details of the

petitioners' dispute with SRS regarding the children's placement.

7. Apparently, SRS did not implement its decision to remove the other child from the petitioners' home until April, 1998. SRS notified the petitioners that they should bring the child and her belongings to the SRS district office on April 22, 1998.

8. Although the parties differ in their versions of the exact events that transpired that day, the petitioners admit that they notified a local television station of this situation and requested it to cover the event for its newscast. The petitioners also admit that on that date a reporter/cameraman from the station was present at the SRS office and filmed the child (from behind) in the petitioners' car and walking into the SRS office. The reporter also attempted to interview SRS personnel inside the offices. SRS informed the reporter of its concerns for the child's privacy, and the station never aired the story.

9. The petitioners do not dispute the gist of the factual bases of the SRS decision in this matter: i.e., that they placed the petitions in their town and that they invited a television station to cover their relinquishment of the child to SRS. They maintain, however, that they had legal "justification" to do so (see infra).

10. The petitioners feel that SRS, the Family Court, and the children's attorney and guardians ad litem all were

not acting in the children's best interest. They maintain that they felt they had no other recourse except to make their case public in the hope of arousing public indignation and attracting the attention of the Governor.

11. Other than the petitioners' own opinions, however, which are obviously self-serving, there is no evidence or indication that the children were in fact threatened with imminent harm by SRS's actions. As noted above, SRS's placement decision was reviewed by the Family Court, at which time the children, themselves, were represented by an attorney and a guardian ad litem. Therefore, it cannot be found that the petitioners had a reasonable basis to conclude that they were justified in violating the privacy of the children in question by making their dispute with SRS a public matter in their community and attempting to disseminate information regarding their dispute through television media.

ORDER

The Department's decision is affirmed.

REASONS

The Commissioner of the Department of Social and Rehabilitation Services is charged by the legislature with the administration of the foster care program. See, generally, 33 V.S.A. § 304(b)(2), and 3501. The statutes

specifically give the Commissioner the duty and authority to:

. . . issue regulations governing application for, and issuance, revocation, term and renewal of licenses and registration. In the regulations he may prescribe standards and condition to be met, records to be kept and reports to be filed.

33 V.S.A. § 306 (1)

Pursuant to this authority, the Department has adopted the following pertinent regulations:

315 Foster parents shall treat all personal information regarding foster children and their families as confidential.

316 Foster Parents shall not authorize the publication of the name or photograph of a foster child in a manner that identified the child as a foster child without written permission of the child's custodian.

319 Foster parents shall respect a child's privacy.

The evidence in this case clearly establishes that the petitioners broadly disseminated and revealed confidential information regarding the foster children in their care, and attempted to do more. Although they claim to have done this out of their concern for the children, as the Department points out, an essential element of any defense of "necessity" is that there be an "imminent emergency". See State v. Cram, 157 Vt. 466 (1991). As noted above, the petitioners presented no credible evidence either that the children were in fact at risk of imminent harm or that they did not have ample opportunity to persuade SRS, the Family Court, and the children's legal advocates of their position.

Even though the petitioners appear to have acted with sincerity, it must be concluded that their lack of perspective and judgement was egregious.

The Board has held that once the Department has established the existence of the facts which form the basis for its action, the decision to revoke the license will be upheld if the Department had some reasonable basis for taking its action. See, e.g., Fair Hearings No. 12,790 and 13,092. The Department's decision will only be overturned if the petitioner can show that the revocation was an abuse of the Department's discretion. There is no question in this matter that the Department considered and reviewed all the pertinent facts and circumstances regarding the petitioners' situation, and that the Department's decision was reasonably supported and in accord with its duly promulgated regulations and policies (see supra).

It should be noted that the Board has specifically held in the past that breach of the confidentiality of personal information about a foster child is in itself such a serious matter that one such breach is sufficient "cause" under 33 V.S.A. § 306(b)(3) for the revocation of a foster care license. See Fair Hearings No. 12,783 and 12,413. As this matter involves two such instances, both of them egregious, it must be concluded that the Department's decision was procedurally and substantively reasonable and that, as a matter of law, the Board is bound to affirm it. 3 V.S.A. §

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3091(d) and Fair Hearing Rule No. 17.

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